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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,178	08/21/2001	Brian J. Brown	S63.2N-5605-US05	8077

490 7590 10/11/2006

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

PREBILIC, PAUL B

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/934,178

Applicant(s)

BROWN ET AL.

Examiner

Paul B. Prebilic

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3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

Claims 17-20 are objected to because of the following informalities: In claim 17, “the peaks” (on line 4) and “the troughs” (on line 5) lack clear antecedent basis. Claims 18-20 are also objected to because they depend upon base claim 17. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 9-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Kleshinski et al (US 5,902,317). Kleshinski anticipates the claim language where:

(1) the annular elements as claimed are the diagonal struts of wire (4) of Kleshinski;

(2) the struts of the ends are longer and inherently more flexible containing two strut straight struts such that the claim language is met requiring “a straight strut”;

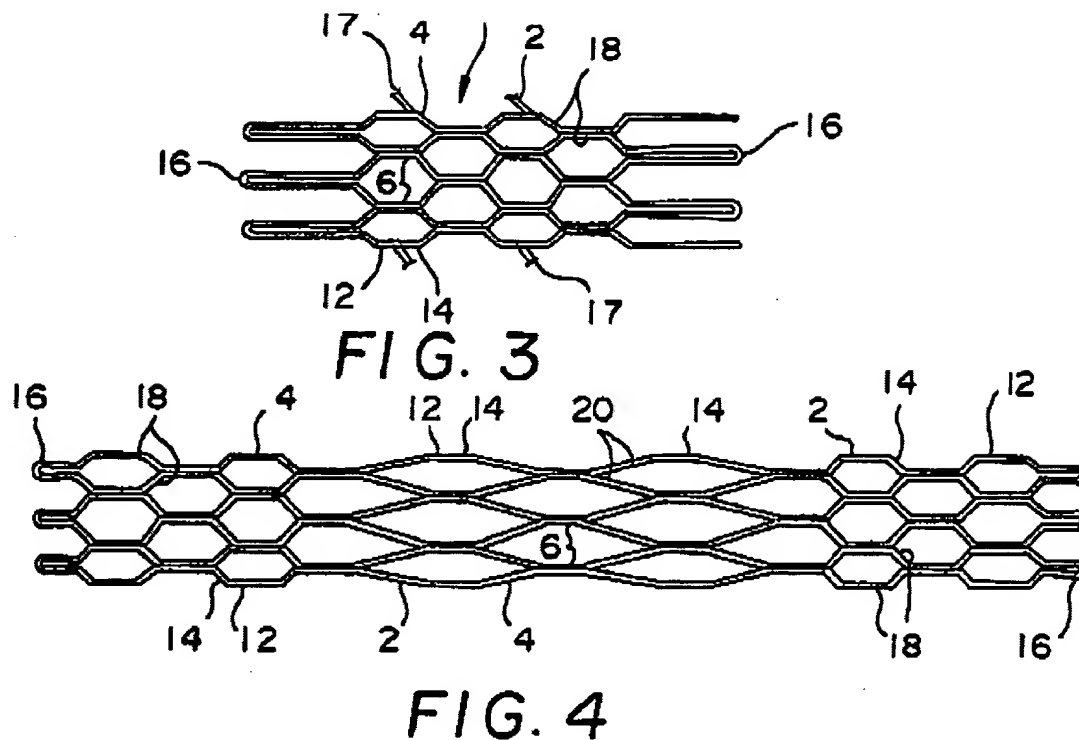
(3) the straight struts of the non-end diagonal struts of Kleshinski are all the same length such that the language requiring “all the straight struts of an annular element are of the same length” is fully met; similarly, the peak portions and valley portions of the non-end annular elements are all of the same length as required;

(4) the “at least one connecting member” as claimed is at least one of the straight portions (6) of Kleshinski;

(5) the fingers of the end segments of Kleshinski provide greater flexibility; see column 4, lines 3-20, Figures 1 to 5 and column 3, line 45 to column 4, line 67;

(6) the “end offset in a circumferential direction for the [other] end” as claimed is met by Kleshinski because the circumferential direction can be along the cell circumference. **In other words, the circumferential direction can be any of at least six directions since the cells are hexagonal.**

With regard to claims 17-20, “offset circumferentially” can be interpreted to encompass movement around the circumference of a cell, that is, about half way around a circumference in the case of Kleshinski. Alternatively, the connectors defining the cells need not be adjacent to each other such that some of the peaks would not be aligned in a longitudinal direction to other peaks of such a cell.



Response to Arguments

Applicant's arguments with respect to claims 9-16 have been considered but are unpersuasive in view of the amended rejection statement.

Applicant argues that the ends of the cells are not offset in a circumferential direction. However, the Examiner disagrees and asserts that the ends of the cells are offset in a circumferential direction when that direction is taken along the circumferences of the cells. **In other words, the circumferential direction can be at least any of the six directions of the each cell since the cells are generally hexagonal in shape.** For this reason, the rejection has been maintained.

In addition, Applicant argues, with regard to claim 17, that the peaks of the proximal portion are not circumferentially offset from the troughs of the distal portion. However, as explained in the rejection, the circumferential offset can be along the circumference of the cell not necessarily along a circumference of the stent. In fact, the stent of claims 17-20 does not clearly have a circumference because it does not have particular shape. Furthermore, what one calls the peak of one band and the trough of another band could be oriented in opposite directions. The specification is not read, as amended, is not read into the claims. There is no language in the claim that defines, for example, the peaks project in a proximal direction and the troughs project in a distal direction. In other words, the peaks of one band could project in a proximal direction and the troughs of an adjacent band could also project in a proximal direction. It would be an error on the Examiner's part to read such limitations into the claims. Moreover, "offset circumferentially" can be interpreted to encompass movement around the circumference of a cell, that is, about half way around a circumference in the case of Kleshinski. Alternatively, the connectors defining the cells need not be adjacent to each other such that some of the peaks would not be aligned in a longitudinal direction to other peaks of such a cell.

Conclusion

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE**

FINAL even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Paul Prebilic", with a stylized flourish at the end.

Paul Prebilic
Primary Examiner
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